

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 3, 2008

NHC HEALTHCARE, INC.

v.

**BETTY FISHER AND AISHA FISHER,
AS POWER OF ATTORNEY FOR BETTY FISHER**

**An Appeal from the Chancery Court for Dickson County
No. 10627-07 Robert E. Burch, Chancellor**

No. M2007-02459-COA-R3-CV - Filed December 30, 2008

This is an appeal of the trial court's confirmation of an arbitration award. The respondents are a mother and daughter. The daughter sought to facilitate her mother's admission to the petitioner nursing home. As part of the admission process, the daughter executed both an admission agreement and an arbitration agreement on behalf of the mother as the mother's power of attorney. The mother incurred over \$50,000 in charges during her stay at the nursing home. The nursing home filed an arbitration action against the mother and her daughter, as power of attorney, seeking an award for the amount owed. Neither the mother nor the daughter appeared at the arbitration. The arbitrator awarded the nursing home the full amount claimed. Later, the nursing home filed a petition in the trial court to confirm the arbitration award. The trial court confirmed the award. The daughter now appeals the trial court's decision insofar as it held her individually liable for the amount due for her mother's nursing home debt. We affirm the trial court's confirmation of the arbitration award, but we also note that neither the final arbitration decision nor the trial court's order held the daughter liable in her individual capacity.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is
Affirmed as Clarified**

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S., and J. STEVEN STAFFORD, J., joined.

D. Nathaniel Spencer, Brownsville, Tennessee, for the appellant, Aisha Fisher, as power of attorney for Betty Fisher.

John B. Curtis, Jr., and Bruce D. Gill, Chattanooga, Tennessee, for the appellee, NHC Healthcare, Inc.

OPINION

Petitioner/Appellee NHC Healthcare, Inc. (“NHC Healthcare”) owns NHC Healthcare Dickson nursing home (“NHC Dickson”). On March 1, 2006, Respondent/Appellant Aisha Fisher sought to have her mother, Respondent/Appellant Betty F. Fisher (“Betty Fisher”), admitted as a resident of NHC Dickson. To facilitate her mother’s admission, on March 1, 2006, Aisha Fisher, as her mother’s legal representative, executed an Admission and Financial Agreement, admitting Betty Fisher to the NHC Dickson nursing home. She also signed an arbitration agreement, obligating Betty Fisher and NHC Dickson to submit to binding arbitration any claims in excess of the General Sessions jurisdiction for Tennessee.

Over the course of Betty Fisher’s stay at NHC Dickson, her unpaid account balance grew to \$55,322.70. Consequently, NHC Healthcare filed an arbitration action against Betty Fisher and Aisha Fisher, as power of attorney for Betty Fisher, for this unpaid balance. The arbitrator held the arbitration proceeding on October 30, 2006. Neither Betty Fisher nor Aisha Fisher appeared at or participated in the arbitration proceeding, despite the fact that both had received notice of it. On November 21, 2006, the arbitrator issued a final decision in the matter, at which time another notice was sent to all parties. The arbitrator found in favor of NHC Healthcare for the unpaid balance “on the account of Betty Fisher.” The arbitrator’s decision is captioned “NHC Healthcare v. Aisha Fisher and Betty Fisher.” It reads:

This matter came for arbitration hearing on the 30th day of October, 2006. It appearing that the Respondent, Ms. Fisher was not present for the hearing. From the sworn statements of the witnesses . . . the arbitrator finds as follows:

1. That there exists a written contract for services and a written arbitration agreement was entered into by the parties on March 1, 2006.
2. That the procedures regarding alternative dispute resolution have been followed and that the Respondents were given proper notice of the arbitration hearing.
3. That NHC Healthcare provided services to the Respondent Betty [F]isher as agreed in the written contract.
4. That Ms. Betty Fisher and Ms. Aisha Fisher have failed to pay for those services as agreed in the written contract.
5. That Ms. Betty Fisher has bee[n] given credit for all payments made on her behalf by any insurance agency and direct payments.
6. That Ms. Betty Fisher’s account balance after all credits is \$55,322.70.
7. That NHC Healthcare is entitled to \$55,322.70 on the account of Betty Fisher.

Thus, NHC Healthcare obtained an award in the total amount of its claim.

On January 29, 2007, NHC Healthcare filed its petition in the trial court below to confirm the arbitration award. NHC Healthcare's petition stated that it was against Betty Fisher and Aisha Fisher, as Power of Attorney for Betty Fisher (collectively, "Respondents"). In its petition, NHC Healthcare asserted that it was entitled to recover "a judgment from Betty Fisher and Aisha Fisher, as power of attorney for Betty Fisher" under the final arbitration decision. Neither Betty Fisher nor Aisha Fisher responded to the petition. On March 13, 2007, the trial court entered an order by default, confirming the final arbitration award in the full amount, including post-judgment interest, attorney's fees, and costs. On April 9, 2007, Aisha Fisher filed a motion to set aside the trial court's order, claiming that she had not been afforded thirty days prior to the hearing to respond to the petition. On June 13, 2007, the trial court set aside the default judgment and allowed Aisha Fisher to file an answer.

On June 11, 2007, NHC Healthcare filed a motion to confirm the arbitration award as outlined in its original petition, arguing that the Respondents had waived their right to contest the arbitration award because more than ninety days had elapsed from the mailing of the arbitrator's final decision. Subsequently, Aisha Fisher filed a response, challenging the assertions made in NHC Healthcare's motion to confirm the arbitration award. On September 10, 2007, a hearing was conducted in the matter. Although the record on appeal does not include a transcript of those proceedings, the parties filed a Joint Statement of the Evidence, approved by the trial court, setting out the facts as stated herein. *See* Tenn. R. App. P. 24(c). According to the Statement of the Evidence, the trial court found that, under Tennessee Code Annotated § 29-5-313, Aisha Fisher's failure to raise defenses to the arbitration award within ninety days of notification of the award barred her from challenging it. On September 25, 2007, the trial court entered an order captioned: "In Re: NHC Healthcare, Inc., Petitioner v. Betty Fisher and Aisha Fisher, as Power of Attorney for Betty Fisher, Respondents." The order confirmed the final arbitration decision:

This cause came to be heard on the 10th day of September 2007, upon the Petition and subsequent Motion to Confirm Arbitration Award filed by the Petitioner, NHC HealthCare against Respondents, Betty Fisher and Aisha Fisher. Based upon the record as a whole and argument of counsel for the respective parties, the Court finds that the Motion to Confirm Arbitration Award should be granted. Further it appears to the Court the Petitioner is entitled to:

- (1) the full amount of the arbitration award in the amount of \$55,322.70, and post judgment interest;
- (2) attorney's fees required for enforcement of the arbitration award; and
- (3) the costs of the cause for which execution may issue.

It is therefore ORDERED, ADJUDGED and DECREED that the Arbitration Award be confirmed and the Petition be awarded a Judgment against Betty Fisher and Aisha Fisher as prescribed.

From this order, Aisha Fisher now appeals.¹

On appeal, Aisha Fisher does not challenge the trial court's factual conclusion that she failed to raise defenses to the arbitrator's decision within ninety days of receiving notice. Rather, she challenges the trial court's order insofar as it confirmed the arbitrator's decision to hold her liable individually for Betty Fisher's debt, rather than holding her liable only in her representative capacity as Betty Fisher's power of attorney. Aisha Fisher notes that she executed both of the agreements with the nursing home in her representative capacity on behalf of Betty Fisher, but claims that she never agreed to be held personally liable, nor did she agree to be a party to the arbitration agreement. She claims that NHC Healthcare did not assert a breach of duty or contract against her, and therefore she cannot be held personally liable on the account of Betty Fisher. Aisha Fisher asks this Court to modify the trial court's decision and confirm the arbitration award against her in her representative capacity only. In response, NHC Healthcare notes that Aisha Fisher filed no challenge to the arbitration decision within ninety days after she received notice of it, and, consequently, she waived her opportunity to do so. NHC Healthcare claims that the arbitrator held Aisha Fisher liable in her individual capacity, and that Aisha Fisher cannot now complain that this decision was erroneous. Once ninety days passed without a defense being raised, it argues, the trial court was required to confirm the arbitration award.

A trial court's review of an arbitrator's decision is governed by the Uniform Arbitration Act, codified in Tennessee Code Annotated § 29-5-301, *et seq.* ("the Act"). The Tennessee Supreme Court discussed the Uniform Arbitration Act in *Arnold v. Morgan Keegan & Co.*:

The statute itself provides that upon application of a party to the arbitration, the trial court "shall confirm an award, unless, within the time limits hereinafter imposed, grounds are urged for vacating or modifying or correcting the award." Tenn. Code Ann. § 29-5-312. Section 29-5-313 provides that the trial court "shall" vacate an award under certain specifically enumerated circumstances. Section 29-5-314 provides for modification or correction of [an] award under alternative enumerated circumstances. Under the terms of the statutes, a trial court may not vacate an award simply because it disagrees with the result. Tenn. Code Ann. § 29-5-313(5).

The limiting language of the statutes governing vacation and modification of arbitration awards evidences an intent to limit *severely* the trial court's authority to retry the issues decided by arbitration. As the New Mexico Supreme Court observed in *Melton v. Lyon*: "It is not the function of the Court to hear cases de novo and consider evidence presented to the arbitrators, but rather to conduct an evidentiary hearing and enter findings of fact and conclusions of law upon each issue raised in the application to vacate or modify the award." 108 N.M. 420, 773 P.2d 732, 733 (1989) (citation omitted). Moreover, the trial court must accord deference to the arbitrator's award.

¹ Betty Fisher is not named as an appellant in the Notice of Appeal.

Once an arbitration award is entered, the finality that courts should afford the arbitration process weighs heavily in favor of the award. Courts are justified in exercising great caution when asked to set aside an arbitration award, which is the product of the theoretically informal, speedy and inexpensive process of arbitration, freely chosen by the parties. All doubts are to be resolved in favor of arbitrability.

914 S.W.2d 445, 448-49 (Tenn. 1996) (footnotes omitted) (quoting *State ex rel Hooten Constr. Co. v. Borsberry Constr. Co.*, 108 N.M. 192, 769 P.2d 726, 727 (1989) (citations omitted)). Thus, as relevant to this appeal, the *Arnold* Court emphasized that the statute permits the trial court to consider vacating, modifying, or correcting an arbitration award only if grounds for doing so are submitted to the trial court “within the time limits . . . imposed” in the statute. *Id.*

The *Arnold* Court also addressed the standard of review to be applied by this Court in reviewing the decision of the trial court in an arbitration case. On appeal, we must accept the trial court’s findings of fact unless clearly erroneous. *Id.* at 449. “Under this deferential standard of review, courts are not permitted to consider the merits of an arbitration award even if the parties allege that the award rests on errors of fact or misrepresentation of the contract.” *Id.* at 450. “Matters of law, if not able to be resolved by resort to the controlling statutes, should be considered independently, with the utmost caution, and in a manner designed to minimize interference with an efficient and economical system of alternative dispute resolution.” *Id.*

With this standard in mind, we consider the merits of Aisha Fisher’s appeal. The plain language of the Uniform Arbitration Act requires that a challenge to a final arbitration decision “be made . . . within ninety (90) days after delivery of a copy of the award to the applicant” unless the challenge is predicated “upon corruption, fraud or other undue means.”² Tenn. Code Ann. § 29-5-313. It mandates that a trial court “shall confirm an award” unless a motion to vacate or modify is made “within the time limits hereinafter imposed.” Tenn. Code Ann. § 29-5-312 (emphasis added). Plainly, this language is directive and mandatory, requiring the trial court to confirm an arbitration award unless it is challenged within the statutory ninety-day period. In this case, the trial court concluded that Aisha Fisher failed to raise defenses to the arbitration decision within ninety days and, therefore, she was barred from raising those defenses. Consequently, the trial court confirmed the arbitrator’s decision. Under these circumstances, we find no error in the trial court’s confirmation of the arbitrator’s final decision.

While we have held that Aisha Fisher is precluded from asserting defenses to the arbitration decision, we are compelled to observe that there is no need for her to do so. Both parties’ arguments

²That statute provides in pertinent part:

(b) An application under this section shall be made within ninety (90) days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety (90) days after such grounds are known or should have been known.

Tenn. Code Ann. § 29-5-313(b).

on appeal are based on the premise that the arbitrator's final decision held Aisha Fisher individually liable for the debt owed to NHC, rather than holding her liable in a representative capacity as power of attorney for Betty Fisher.³ Both also presume that the trial court, in confirming this award, entered a judgment against Aisha Fisher in her individual capacity. This is not the case.

The arbitrator's final decision, captioned "NHC Healthcare v. Aisha Fisher and Betty Fisher," is quoted in full above. The arbitration decision first observes that "the Respondent, Ms. Fisher," did not appear at the arbitration hearing and notes that "the Respondents" were given notice of it. It references the NHC admission agreement and arbitration agreement, both signed by Aisha Fisher only as power of attorney for Betty Fisher, and finds that services were provided to "the Respondent Betty Fisher" as set forth in the contract. The award finds that "Ms. Betty Fisher" had been credited for any insurance payments and then finds that "Ms. Betty Fisher and Ms. Aisha Fisher" had failed to pay for the services rendered. It concludes by finding that "NHC Healthcare is entitled to \$55,322.70 on the account of Betty Fisher."

The arbitration award, expressly premised on the written agreements, does not specify that Aisha Fisher is being held individually liable for Betty Fisher's account. It notes only that neither Betty Fisher nor Aisha Fisher appeared at the hearing, and that neither had paid for the services rendered to Betty Fisher "as agreed in the written contract." The award states that NHC Healthcare "is entitled to \$55,322.70 on the account of Betty Fisher," but does not state that Aisha Fisher is liable to NHC for Betty Fisher's account. Under all of these circumstances, the arbitration decision simply does not hold Aisha Fisher individually liable for the services rendered to Betty Fisher.

Recognizing that Aisha Fisher signed the agreements only as power of attorney for Betty Fisher, NHC Healthcare captioned its petition to confirm the award, "NHC Healthcare, Inc., Petitioner, vs. Betty Fisher and Aisha Fisher, as Power of Attorney for Betty Fisher, Respondents." In this petition NHC Healthcare asked the trial court to confirm the arbitration award "against Betty Fisher and Aisha Fisher, as Power of Attorney for Betty Fisher." The trial court's order on NHC Healthcare's petition is captioned the same as NHC Healthcare's petition, naming Aisha Fisher as a respondent "as Power of Attorney for Betty Fisher." It then confirmed the arbitration award and entered a judgment "against Betty Fisher and Aisha Fisher as prescribed." Thus, the trial court entered a judgment against Aisha Fisher "as prescribed," referencing the "record as a whole," consisting of the agreements, the arbitration award, and NHC Healthcare's petition to confirm, all of which name Aisha Fisher in her capacity as power of attorney for Betty Fisher. Thus, neither the arbitration decision nor the trial court's order confirming it grant NHC Healthcare a judgment against Aisha Fisher in her individual capacity.

We emphasize that the trial court was constrained to confirm the arbitrator's decision, regardless of the language therein, because Aisha Fisher did not raise a defense to the award within

³The parties submitted supplemental briefs to clarify their positions on their interpretation of the both the arbitrator's final decision and the trial court's order.

the ninety-day time limit.⁴ We feel compelled to clarify, however, that Aisha Fisher has not been held liable in her individual capacity by either tribunal.⁵

The decision of the trial court is affirmed. Costs on appeal are to be taxed to Appellant Aisha Fisher and her surety, for which execution may issue, if necessary.

HOLLY M. KIRBY, JUDGE

⁴Even if Aisha Fisher had raised a timely challenge to the award, an error of fact or law is an insufficient basis for vacating an arbitration award. *See Arnold*, 914 S.W.2d at 451-52.

⁵Aisha Fisher has been held liable in her capacity as power of attorney for Betty Fisher. We do not address the extent of Aisha Fisher's liability in this capacity.